

**Letter of Findings: 01-20221084
Indiana Individual Income Tax
for the Year 2021**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual provided documentation that she inadvertently filed as an Indiana taxpayer for the year 2021 and that she was not a resident of Indiana for that year.

ISSUE

I. Individual Income Tax - Residency.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-7](#); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-22.5](#); [45 IAC 3.1-1-23](#).

Taxpayer protests that she is not a resident of Indiana and that her pension income for 2021 was not subject to Indiana income tax.

STATEMENT OF FACTS

In a letter dated February 21, 2022, to the Department, Taxpayer states that she is a resident of North Carolina and that, for tax year 2021, she "filed an Indiana tax return by mistake[.]" She further states, "I am no longer a resident of IN. I am a resident of NC, and moved from IN to NC in 2013. My [] pension comes from IN. IN does not withhold IN taxes because I owe taxes to NC instead." Based on Taxpayer's 2021 filing, the Department issued a proposed assessment for income tax for the year 2021 in addition to the amount of Indiana income tax Taxpayer reported on the 2021 Indiana return she filed. Taxpayer filed a protest, and a telephonic administrative hearing was held. Additional facts will be provided as necessary below.

I. Individual Income Tax - Residency.

DISCUSSION

As noted, Taxpayer's argument is that she mistakenly filed an Indiana tax return for the year 2021. In correspondence to the Department, Taxpayer states that she is retired and receives a pension from Indiana but that she has been "a full-time resident of North Carolina since 2013." Further, Taxpayer states that she pays "estimated quarterly taxes every year to [the] Dept[.] of Revenue NC and file taxes in NC. I have filed my 2021 taxes in NC and have enclosed a copy. Taxpayer states that she is a resident of North Carolina and that for tax year 2021 she "filed an Indiana tax return by mistake[.]" Taxpayer also sent a photocopy of 4 U.S.C. § 114.

As a threshold issue, it is Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "[t]he notice of proposed assessment is prima facie evidence that the [D]epartment's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an adjusted gross income tax on all residents. IC § 6-3-2-1(a). Taxpayer's Indiana income is determined by starting with the federal adjusted gross income and making certain adjustments. IC § 6-3-1-3.5(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12; *see also* [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

[45 IAC 3.1-1-23](#) explains further how "residency" affects a taxpayer's income tax liability, in relevant part, as follows:

(2) Taxpayer Moving from Indiana

Any person who, on or before the last day of the taxable year, changes his residence or domicile from Indiana to a place without Indiana, with the intent of abiding permanently without Indiana, is subject to adjusted gross income tax on all taxable income earned while an Indiana resident. Indiana will not tax income of a taxpayer who moves from Indiana and becomes an actual domiciliary of another state or country except that income received from Indiana sources will continue to be taxable.

. . .

(4) Part-Time Resident Individuals

Persons residing in Indiana but living part of the year in other states or countries will be deemed residents of Indiana unless it can be shown that the abode in the other state or country is of a permanent nature. Domicile is not changed by removal therefrom for a definite period or for a particular purpose. A domicile, once obtained, continues until a new one is acquired.

[45 IAC 3.1-1-22](#) states as follows:

(a) "Domicile" means a person's domicile is the state or other place in which a person intends to reside permanently or indefinitely and to return to whenever he or she leaves the place. **A person has only one (1) domicile at a given time even though that person may be statutorily a resident of more than one (1) state.** A person is domiciled in Indiana if he or she intends to reside in Indiana permanently or indefinitely and to return to Indiana whenever he or she leaves the state.

(b) A person is domiciled in a state or other place until such time as he or she voluntarily takes affirmative action to become domiciled in another place. **Once a person is domiciled in Indiana, that status is retained until such time as he or she voluntarily takes positive action to become domiciled in another state or country and abandons the Indiana domicile by relinquishing the rights and privileges of residency in Indiana.**

(c) In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a permanent place of residence at that place. **The intent to change one's domicile must be present and fixed and not dependent upon the happening of some future or contingent event. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.**

(d) There is no one (1) set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the totality of facts, supported by objective evidence, in each individual case.

(Emphasis added).

[45 IAC 3.1-1-22.5](#) further outlines the factors in determining a person's domicile, as follows:

(a) The department may require documentation from a person to evaluate domicile.

(b) The one hundred eighty-three (183) day and permanent place of residence threshold in IC [§] 6-3-1-12(b) and [\[45 IAC 3.1-1-21\]](#) is not a test for domicile.

(c) **A person is presumed not to have abandoned their state of domicile and established a new state or other place of domicile in a given year if, during that year, the person maintained a permanent place of residence (whether as an owner, renter, or other occupier of the residence) in that state and**

the person did more than one (1) of the following:

- (1) Claimed a homestead credit or exemption or a military tax exemption on a home in that state.
- (2) Voted in that state.
- (3) Occupied a permanent place of residence in that state or other place of domicile for more days of the taxable year than in any other single state.
- (4) Claimed a benefit on the federal income tax return based upon that state being the principal place of residence.
- (5) Had a place of employment or business in that state.

A person may rebut this presumption through the presentation of substantial contrary evidence.

(d) If a person's domicile is not resolved by subsection (c), the department may consider additional relevant factors to determine the person's state or other place of domicile, including the state or other place where the person:

- (1) maintained a driver's license or government issued identification card;
- (2) was registered to vote;
- (3) registered a vehicle;
- (4) claimed as dependents immediate family members who relied, in whole or in part, on the taxpayer for their support;
- (5) assigned or maintained a mailing address;
- (6) maintained bank accounts;
- (7) maintained active membership in a religious, social, cultural or professional organization;
- (8) received professional services; and
- (9) kept valuables or family heirlooms.

This list of additional, relevant factors is not exclusive.

(Emphasis added).

In the case at hand, Taxpayer claims that she has been a resident of North Carolina since 2013, and specifically was a resident of North Carolina in 2021. As evidence of her being a resident of North Carolina, Taxpayer provided documentation and information, including the following:

- (1) a copy of her Amended Return for North Carolina for the calendar year 2021;
- (2) a copy of her voter registration card for North Carolina (issued in 2015);
- (3) 2020 and 2021 utility bills for her home in North Carolina;
- (4) a copy of her county property tax records from 2018;
- (5) credit card billing information showing North Carolina as her address (2020 date);
- (6) insurance information for her with the North Carolina address (dated in 2021);
- (7) North Carolina medical information from 2021;
- (8) mortgage billing statement for her North Carolina address;
- (9) 2019 and 2020 North Carolina income tax returns;
- (10) 2021 "State of North Carolina Registration Card" for a vehicle;
- (11) a certificate of title for a vehicle for the State of North Carolina;
- (12) and a copy of her 2021 North Carolina driver's license.

Taxpayer's argument is that she inadvertently filed her state taxes with Indiana and that the retirement income is not taxable to Indiana. The Department finds that Taxpayer has provided sufficient evidence that she was a resident of North Carolina in 2021, and additionally that [45 IAC 3.1-1-7](#) states in pertinent part:

(2) Income from a pension, annuity, profit-sharing, or stock-option plan that meets the qualifications of the Internal Revenue Code is taxed by the state of legal residence. Lump sum distributions from qualified plans are taxed by the state which, at the time of the distribution, is the taxpayer's legal residence. Whether a plan meets the qualifications of the Internal Revenue Code is determined by the Internal Revenue Service.

In the present case, Taxpayer was able to provide documentation establishing that she was not an Indiana resident in 2021. Taxpayer has met the burden of proving the proposed assessment is wrong, as required under IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is sustained.

July 29, 2022

